No. 71-869

In the Supreme Court of the United States

OCTOBER TERM, 1971

THE DEUTSCH COMPANY, ELECTRONIC COMPONENTS DIVISION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App 1-2) is reported at 445 F. 2d 901. The decision and order of the National Labor Relations Board (Pet. App. 3-80) are reported at 180 NLRB 8.

JURISDICTION

The decision of the court of appeals was entered on June 23, 1971, and Deutsch's petition for rehearing

was denied on October 8, 1971 (Pet. App. 1, 2). The petition for a writ of certiorari was filed on January 5, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's findings that the Company laid off 96 employees for the purpose of discouraging union membership, and that it solicited employees to revoke their union authorization cards.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the petition at pp. 3-4.

STATEMENT

In March 1968, the International Association of Machinists and Aerospace Workers, AFL-CIO, began an organizing campaign at the Company's Electronic Components Division plant in Oceanside, California (Pet. App. 11-12). The Board found that the Company, in connection with this campaign and in violation of Section 8(a)(1) of the National Labor Relations Act, coercively interrogated employees about union activity; threatened reprisals to dissuade employees from union activity; unduly restricted union solicitation on Company property; and imposed stricter work rules to discourage union activity (Pet. App.

53-59). The Board also found that the Company violated Section 8(a)(3) and (1) of the Act by warning, suspending, and withholding a raise from one employee, by transferring two employees to less desirable jobs, and by discharging another employee—all because of their union activities (Pet. App. 59-64). The court of appeals sustained these findings (Pet. App. 1), and petitioner does not contest them here.

The petition contests only the Board's additional findings that the Company violated Section 8(a)(1) of the Act by soliciting revocations of union authorization cards, and Section 8(a)(1) and (3) by laying off 96 employees for the purpose of discouraging union membership. The facts relating to these violations are as follows:

On March 13, 1968, the Company mailed to its employees a letter admonishing them not to sign a union authorization card (Tr. 28, GCX 4).[1] The letter further stated that it was "not necessarily true" that the authorization card would be "kept confidential by the union and the government" (*ibid.*). On March 15, the Company sent another letter to its employees, attacking the Union and concluding: "If you have changed your mind, been misinformed, coerced, threatened, or intimidated into signing an authorization card * * * you can revoke that card by mailing the enclosed post card" (Tr. 28-29, GCX 5). Enclosed in

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[1] "Tr." refers to the stenographic transcript of testimony, and "GCX" to the exhibits introduced by the General Counsel, at the Board hearing.

each letter was a stamped postcard addressed to the Board, reading as follows (*ibid.*):

> Re: Deutsch Electronic Components Division
>
> Gentlemen:
>
> Recently I signed a union representation card for the International Association of Machinists because of misinformation or duress.
>
> I hereby revoke my authorization for all purposes.
>
> ....
>
> Signature Date

On March 15, the Company notified 96 of its approximately 570 production employees that, effective immediately, they were being laid off and, unless recalled, would be terminated at the end of 60 days (Pet. App. 40, 41, 45; Tr. 128-129, 429-431, 512-514). Of the 96 employees, 45 had assembly-line jobs, 5 were inspectors, 11 were machine operators, 7 were in tooling or tool and die, 6 in component preparation, and the other 22 in miscellaneous supporting occupations (GCX 44). Supervisors were instructed to tell the employees that the reason for the layoff was "inventory adjustments, and because of a change in manufacturing methods" (Tr. 682). This was the language that the plant management had "work[ed] out among [them]selves * * * to be sure that all of [them] were saying exactly the same thing" to the employees (Tr. 774-775).

Until March 14, the day before the layoff, the Company had advertised extensively in local newspapers

for new employees in several of the job classifications affected by the layoff (Pet. App. 41; Tr. 921-922, GCX 32, GCX 33). Between January 1 and March 14, the Company hired 138 new employees, many of whom were in those job classifications. 12 employees, 11 of them in the affected job classifications, were hired between March 11 and March 14 (Pet. App. 42; GCX 48). Persons hired in this period were told by personnel representatives that they were getting a "steady job" and that they would not "have to worry about layoffs" (Pet. App. 42; Tr. 239-240, 583-584). When a machinist quit on March 13, a personnel supervisor told him that "right now we have openings for 40 more machinists, for trained men in the shop" (Pet. App. 12; Tr. 376-381).

From the week ending February 11, up to and including the layoff on March 15, employees in certain departments were regularly working overtime (Pet. App. 43; Tr. 102-103, 133-134, 165-166, 267-269, 360-361, 414-416, 511-512; GCX 11, 20, 27, 30, 34). One employee was asked to work six or seven hours overtime on March 14 (Pet. App. 43; Tr. 167-168). Employees in other departments were rushing to keep up with incoming orders, and were exhorted during the last two weeks before the layoff to "speed it up" because the Company was expecting more orders that might necessitate Saturday work (Pet. App. 43; Tr. 245-247, 480-482).

Beginning on April 11, the Company began to recall some of the laid-off employees, and, by May 3, had offered to recall 60 of them. Recall offers continued at a slower rate thereafter, until the end of

July, when all but 13 of the laid-off employees had either returned to work or had declined the recall offer. (Pet. App. 45, 73, n. 20; GCX 45, 46, 47.)

Based on the foregoing facts, the Board concluded that the Company had solicited the employees to revoke their authorization cards, and had thereby violated Section 8(a)(1) of the Act. The Board stated (Pet. App. 52-53):

> while it is not unlawful for an employer to inform his employees that they may withdraw their authorization cards if they had changed their minds, or if they were coerced or intimidated into signing, it is unlawful for an employer to attempt to assist them in revoking their cards by furnishing to them, without a demonstrated need or request therefor, addressed, stamped postcards which required no more than their signature to notify the Board of the revocation of their authorization cards. There is no showing that the employees required or requested such assistance of the Respondent * * *.[2]

The Board further concluded that (Pet. App. 70):

> by the layoff of 96 persons on March 15, 1968, Respondent was undertaking a dramatic show of its opposition to union organization, thereby discriminating against the laid-off employees with an object of discouraging membership in the Union * * * in * * * violation of Section 8(a)(3) of the Act.

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[2] Quoting from *The Deutsch Company, Electronic Components Division*, 165 NLRB 140, 145, involving similar conduct at the Company's Banning plant.

In reaching this conclusion, the Board rejected the Company's assertion that the layoff was motivated by economic considerations (Pet. App. 67-68):

> While Respondent points out that commencing in the fall of 1967, corporate management had been pressing the Oceanside management for changes in operation aimed at bringing the Oceanside plant within its overextended budget, Respondent did not produce records as to the Oceanside budget which would either show the nature of this alleged budgetary discrepancy, or would indicate possible alternative approaches. Nor did it call the top corporate officials who were voicing these complaints. * * * There is only generalized testimony from General Manager Brooks signifying his belief that in some way improved efficiency and the state of the inventory and orders made March 15 the right time for a massive layoff to meet a budgetary overextension the dimensions of which were never fully defined. Respondent's failure to produce the very records supposed to support its contentions makes evaluation of its conclusions impossible. No reason is advanced for not producing such records, and the inference is inescapable that possibly they do not provide the needed support.

The Board entered an appropriate remedial order (Pet. App. 4-5, 76-80). The court of appeals, in a *per curiam* opinion, held that the Board's findings were supported by substantial evidence, and enforced its order (Pet. App. 1).

ARGUMENT

1. The first issue raised in the petition (Pet. 2)—whether a layoff "carried out in order of seniority and for solely economic purposes" was unlawful—is not presented on this record. The Board found, and the court of appeals sustained its finding, that the layoff was not motivated by economic considerations, but rather was undertaken to discourage participation in union activities. Accordingly, the only issue actually presented is whether the Board's finding as to the petitioner's anti-union motive is supported by substantial evidence. Such a factual question does not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491. In any event, the evidence amply supports the Board's finding (*supra*, pp. 4-6; Pet. App. 40-50, 64-72).

2. Similarly, the second issue raised in the petition (Pet. 2)—whether the Company could "engage in any expression that might persuade employees to repudiate the union"—is not presented here. The Board specifically upheld petitioner's right to inform its employees of their right to revoke their authorizations (*supra*, p. 6). However, it found that by enclosing post cards, stamped and addressed to the Board, petitioner went beyond "expression" and actively solicited the employees to repudiate the Union. It is well settled that this type of employer action violates Section 8(a)(1) of the Act.[3]

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[3] See the cases cited in the Board's brief in opposition to the petition for certiorari in *The Deutsch Company, Metal Components Division* v. *National Labor Relations Board*, No. 71-854, which presents the identical issue.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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